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MISSOULA, MT

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PATRICK E. DUFFY
BY _____
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

MICHAEL ELLENBURG)	CV 04-62-M-DWM
)	CV 04-116-M-DWM
Petitioner,)	
)	
vs.)	ORDER
)	
MIKE MAHONEY,)	
)	
Respondent.)	
_____)	

Petitioner Michael Ellenburg has filed an Amended Petition for Writ of Habeas Corpus pursuant to 20 U.S.C. § 2254. Ellenburg challenges his 1999 convictions for forgery and theft in the Montana Fourth Judicial District Court. Ellenburg's Petition contained 17 habeas claims, 15 of which were dismissed by this Court on January 24, 2007. All that remain to be decided are Ellenburg's speedy trial claim and his due process claim that the prosecution withheld information favorable to the defense.

United States Magistrate Judge Jeremiah C. Lynch entered Findings and Recommendations in this matter on February 8, 2007, in which he recommends denial of the remaining claims and dismissal of the Amended Petition. Petitioner did not timely

object and so has waived the right to de novo review of the record. 28 U.S.C. § 636(b)(1). This Court will review the Findings and Recommendation for clear error. McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc., 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a "definite and firm conviction that a mistake has been committed." United States v. Syrax, 235 F.3d 422, 427 (9th Cir. 2000).

With regard to the Petitioner's speedy trial claim, Judge Lynch considered the four-part test set forth in Barker v. Wingo, 407 U.S. 514, 530 (1972), and concluded that the Montana Supreme Court's decision rejecting Petitioner's speedy trial argument was not contrary to, or an unreasonable application of federal law. In particular, Judge Lynch noted that the Montana Supreme Court's factual determination that Petitioner was responsible for the majority of the delay was reasonable, and the that Petitioner failed to demonstrate any prejudice resulting from the delay. Judge Lynch recommends denial of the due process claim based on his determination that there is no reason to disturb the Montana Supreme Court's factual finding that the Petitioner failed to show that he could have obtained the allegedly withheld evidence through other means. Judge Lynch also recommends denial of a certificate of appealability.

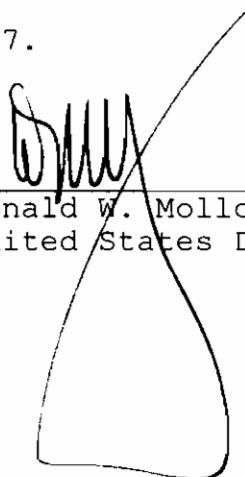
I can find no clear error with Judge Lynch's Findings and Recommendations and adopt them in full.

Accordingly, IT IS HEREBY ORDERED that the Petitioner's speedy trial and due process habeas claims identified by the

Court as claims (2) and (9) are DENIED.

IT IS FURTHER ORDERED that this action is DISMISSED as fully resolved, and a certificate of appealability is DENIED.

DATED this 6th day of March, 2007.



Donald W. Molloy, Chief Judge
United States District Court